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OFFICE OF PETITIONS

In re Application	:
Jason N. Farmer	:
Application No. 09/945,370	: DECISION ON APPLICATION
Filed: August 31, 2001	: FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 60988-P002US-	:
10103486	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)...," filed January 13, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred eighty-two (282) days to three hundred two (302) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred thirty two (332) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 14, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred eighty-two. On January 13, 2005, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred two (302) days. Applicants dispute the reduction of fifty-eight (58) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed October 9, 2001.

The Office initially determined a patent term adjustment of two hundred eighty-two (282) days based on an adjustment for PTO delay of three hundred forty (340) days

¹ PALM records indicate that the Issue Fee was received in the Office on January 13, 2005.

pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delay of fifty-eight (58) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 340 days has been reviewed and found to be correct. The reduction of twenty (58) days of applicant delay is at issue.


The reduction of 58 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed October 9, 2001, is of record in the application with a date of receipt by the Office of January 17, 2002. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as March 8, 2002 or assessed applicants a delay of fifty-eight (58) days. The response however was not filed within the three-month period under 37 CFR 1.704(b), the response was received eight days over the three-month period for reply and accordingly, applicant's delay should have been assessed as eight (8) days. Applicant is advised that the period set forth in the Notice to File Missing Parts for reply has no effect on the three-month period set forth in this paragraph. See 37 CFR 1.704(b).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred thirty-two (332) days.

The petition fee in the amount of \$200.00, as set forth in 37 CFR 1.18(e), has been charged to deposit account no.06-2380, per the authorization in the petition. No additional fees are required.

The Office will refer the matter to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen